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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections 3(n) and 332)
of the Communications Act)
)
Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

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COMMENTS OF ADVANCED MOBILECOMM, INC.

Advanced MobileComm, Inc. ("AMI"), pursuant to Section 1.415 of the Commission's Rules, hereby submits its Comments in response to the Third Further Notice of Proposed Rule Making, FCC 95-156 (May 5, 1995) in the above-captioned proceeding.

By its NPRM, the Commission has proposed to amend the 45 MHz spectrum cap for cellular telephone service, Specialized Mobile Radio ("SMR") service, and broadband Personal Communications Service ("PCS") that currently applies only to licensees in these services who are classified as Commercial Mobile Radio Service ("CMRS") providers to included all providers of these services regardless of their regulatory classification. In the context of this proceeding, AMI respectfully requests the Commission to clarify Section 20.6(b) of the Rules consistent with the modifications as set forth below.

AMI has constructed and operated both regional and local 800 MHz and 900 MHz SMR systems in locations throughout the United States over the past decade. AMI's SMR systems have served thousands of users during that time. AMI has also participated extensively in Commission proceedings that have structured the SMR industry and has been one of the leading proponents of the introduction of new spectrally-efficient technologies to enhance the capacity and

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capabilities of SMR systems.

Section 20.6(b) currently requires that an entity "count all 800 MHz channels and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap." The rule goes on to provide that all 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired) and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired). This subsection concludes by limiting the amount of 800 MHz SMR service to be attributed to an entity for purposes of determining compliance with the cap to 10 MHz.

In the Third Report and Order, the Commission established, among other things, a spectrum aggregation limit for CMRS services on which Section 20.6(b) is based.¹ The cap covers cellular, PCS, and SMR spectrum classified as CMRS.² The Commission specifically acknowledged that SMR spectrum is not currently equivalent to cellular or broadband PCS spectrum and that the "biggest problem" is that SMR channels are assigned on a station-by-station basis.³ The Commission recognized that identical amounts of SMR spectrum and cellular or broadband PCS spectrum are not competitively equal. Therefore, the Commission decided that "even if a licensee has more than 10 MHz, we will attribute a maximum of 10 MHz of SMR spectrum to that entity."⁴ The Commission clearly stated that "we will attribute to an entity a maximum of 10 MHz of SMR

¹Third Report and Order, GN Docket No. 93-252, para. 238, 9 FCC Rcd 7988 (1994).

²Id. at para. 275.

³Id.

⁴Id.

spectrum, including both 800 and 900 MHz spectrum for the purposes of determining compliance."⁵

In spite of the unambiguous language of the Third Report and Order, Section 20.6(b) of the Commission's Rules states that the 10 MHz SMR spectrum attribution provision applies only to 800 MHz SMR service. AMI respectfully requests that the Commission modify Section 20.6(b) so that it reflects the letter and intent of the Commission as set forth in the Third Report and Order.

AMI also respectfully requests that the Commission clarify Section 20.6(b) to remove any possible ambiguity concerning multiple counting of SMR channels toward the spectrum cap in situations where a specific channel may be licensed at more than one location within a given MTA or BTA to the same licensee. Where such licensees hold two or more licenses for the same frequency within a particular MTA or BTA, or obtain a wide-area license and reuse the frequency within that market, this spectrum should only be counted once for purposes of determining compliance with the spectrum cap in any geographic area. AMI believes this to be consistent with the present intent of Section 20.6, but to avoid possible alternative constructions of the term "channels," AMI suggests replacing current Section 20.6(b) as set forth below. By modifying this subsection, the Commission can make clear that SMR channels licensed on the same frequency should not be added together for purposes of measuring compliance with the spectrum cap.

⁵Id. at 17 (emphasis added).

To clarify these two ambiguities, AMI respectfully submits the following language modifying Section 20.6(b) for the Commission's consideration:

(b) SMR spectrum. To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz frequency pairs located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz frequency pairs located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired), provided that any discrete 800 or 900 MHz frequency pair shall be counted only once per licensee within the geographic area. No more than 10 MHz of SMR in the 800 MHz and 900 MHz SMR services will be attributed to an entity when determining compliance with the cap.

For these reasons, AMI urges the Commission to modify Section 20.6(b) of the Rules as described herein.

**Respectfully submitted,
ADVANCED MOBILECOMM, INC.**

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